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Development, Discourse and Law: Transgender and Same-Sex Sexualities in Nepal

Paul Boyce and Daniel Coyle

July 2013

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DEVELOPMENT, DISCOURSE AND LAW: TRANSGENDER AND SAME-SEX SEXUALITIES IN NEPAL

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List of Abbreviations

BDS	Blue Diamond Society
CPA	Comprehensive Peace Agreement
FGD	Focus Group Discussions
INGO	International Non-Governmental Organisation
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NGO	Non-Governmental Organisation

List of interview respondents

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Mira Mishra, Professor, Gender Studies Program, TU
Krish Neupane, Gay Group, BDS
Rikke Olsen, UNHCR
Sunil Babu Pant, President, BDS
Ruben Del Prado, Country Director, UNAIDS
Rajiv Dua, Population Services International

There were also a number of anonymous interview respondents.

We especially acknowledge the focus group participants who are not named in this report on grounds of anonymity. This report would not have been possible without their contributions and insights. We also thank the Blue Diamond Society for valuable assistance.

Sunil Babu Pant is quoted more often than other informants featured in this report, given his prominence as the main social activist working on issues of sexual and gender minorities rights in Nepal. The views expressed in the report are, however, the authors' own.

Executive Summary

This report presents research conducted in Nepal between November 2012 and January 2013 aimed at exploring the legal, social and economic context pertaining to sexual and gender minority rights. The research explored recent legal reform in Nepal, the wider socioeconomic and social context of legal reform, and included work with sexual and gender minority persons, aimed at understanding their life experiences.

Findings of the research emphasise complex connections between law, social context and sexual subjectivity. There is dissonance in Nepal between a progressive legislative environment in respect of gender and sexual minority issues and everyday sociocultural ambivalence toward such sexual and gender minority persons. Such persons may suffer from explicit prejudice, lack of economic opportunity and familial rejection. Other forms of marginalisation may be more tacit, but nonetheless profoundly significant.

Values pertaining to marriage, family and sexuality are changing in contemporary Nepal, especially in respect of the influence of globalisation and the social movements and migratory working practices that are an important component of the remittance economy. Social attitudes toward same-sex sexualities, transgender and 'third gender' are increasingly affected by this evolving social context.

Legal reform in respect of gender and sexual minorities in Nepal has been progressive in promoting an understanding of such genders and sexualities as natural (rather than unnatural). Whilst supportive of this position in respect of law the present research advances an approach to sexuality in social analysis and development work premised on the importance of understanding the relationship between contemporary sexual subjectivities, legal discourse and socioeconomic transformation (as opposed to sexualities being naturally determined). The significance of such a perspective is explored for development work in the context of sexuality and legal advancement.

The present report is organised in respect of four main thematic areas. The first of these, Legal Context, explores some of the current opportunities and threats affecting community-based work with sexual and gender minorities in Nepal. This is also where we consider ways in which an appeal to natural sexualities in law may be at variance with a progressive conceptualisation of sexuality in development work, even as it is important and progressive legally.

Under the thematic area of Networks the report explores ways in which the development of rights-based work for sexual and gender minorities in Nepal has been informed by transnational discourses and practices, and has in turn informed international debates concerning sexuality and rights. This has implications for ways in which sexualities might be conceptualised in rights-based advocacy.

In respect of the theme of Actors we consider ways in which the work of Non-Governmental Organisations (NGOs) in this field relates to the experiences of everyday social actors (from among gender and sexual minority networks). Consequences for the effective representation and potential misrepresentation of such people's needs and experiences are considered.

Finally, through the theme of Institutions, we consider parallels between sexuality politics in Nepal as related to the (constitutional) institutionalisation of caste and ethnicity. Implications for people's understanding of the state and legal representation are explored.

In addition a detailed case study is included of Pant vs. Government of Nepal – the case that brought about legal reform for sexual and gender minorities in the country. This is considered in respect of social change and development.

Recommendations coming out of this research are as follows:

The present research has highlighted the need to understand the lives and experiences of sexual and gender minority people independently from an HIV prevention and/or legal framework as a basis for social analysis, and to build development interventions into the social and economic wellbeing of such people from this basis.

There is a need for examination of gender (including masculinity) and heteronormativity in work on sexuality and development – especially with respect to changing social norms and values. Gender and sexual minorities ought to be the focus of new research and interventions, but the lives of such people must be studied holistically, in respect of the total context of social, cultural and economic transformation in Nepal. This is opposed to research that emphasises the reductive use of sexuality categories as if knowledge of such terms alone represented the most salient framing for sexual and gender minority subjects. Rather, we advocate for closer work with gender and sexual minority peoples, seeking to better understand and represent their life circumstances and experiences.

In Nepal specifically there is a paucity of research on people identified as ‘lesbian, gay, bisexual, transgender or intersexed’ (LGBTI). Despite the evocation of this term in law there is a lack of understanding of the lives of people who actually identify as LGBTI (in those specific terms). Research on these themes might reveal interesting insights into sexuality and socioeconomic aspirations in Nepal.

In terms of policy reform, it is important to de-emphasise (or refocus) mappings and population estimates in research with sexual and gender minorities in favour of social transformation approaches, focused on education, outreach and wider awareness of sexual and gender minority issues. The rollout of a new national sexual health education curriculum in Nepal offers an exciting opportunity to conduct research on these issues.

There is also a need to conduct research on access to healthcare by gender and sexual minority peoples, many of whom may be excluded from mainstream health facilities (especially those who might be explicitly identified as gender-variant in terms of appearance).

Direct funding for advocacy/education campaigns should also continue as well as any programme that engages larger segments of Nepali society in dialogue about sexual and gender minority issues, and with sexual and gender minority peoples, relating such interventions to the larger social/national issues that affect participants’ daily lives.

Finally, it is imperative to conduct future research with sexual and gender minority peoples and engaged participants who can determine frames of study and reference for themselves. This is important for grounding social analysis, development interventions and rights-based advocacy in people’s social and personal realities.

1 Introduction

This report explores the social, legal and constitutional context of transgender and same-sex sexualities in Nepal. Nepal was chosen for being a country that, over the last decade or more, has made significant legal advances in respect of rights for sexual and gender minorities. Specifically, in December 2007 the Supreme Court of Nepal issued a verdict in the case of *Pant versus Nepal*

declaring full, fundamental human rights for all 'sexual and gender minorities' – lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons... In addition to ordering the government to scrap all discriminatory laws, the court legally established a third gender category in addition to male and female – calling it 'other'. (Bochenek and Knight 2012: 11)

Against this background, however, social attitudes toward people of transgender and same-sex sexuality remain complex and conflicted in Nepal, and the social reality is that many sexual and gender minority people may remain far more marginalised than current legislation might suggest. Any understanding of Nepal as a progressive legal example of same-sex sexuality and transgender activism must also consider the social realities, prevailing prejudices and the persistence of harassment and violence toward sexual and gender minority persons. Indeed, even though Nepal is not a country that has been characterised as having high levels of homophobic violence or action, social pressure to conform to heteronormative social conventions, and discrimination towards those who fail to conform, still predominantly shape the lives of Nepal's sexual and gender minorities.

This is notwithstanding ways in which heteronormative subject positions may enable social space for same-sex desires. Many people who practise same-sex sexualities or who might identify as transgender (in whatever terms or language) may also be heterosexually married, for example. Conforming to such kinship arrangements may allow for same-sex intimacies and relationships, as people can more readily pass as conventionally heterosexual or gender normative. Indeed, in Nepal (as elsewhere in South Asia) many people may not identify with explicit same-sex sexual identities, even if they practise sex with people of the same gender. This is not to discount transformations in sexual lives and subjectivities being brought about through social change and legal reform in Nepal, but to set such changes in the context of enduring values and practices. What makes Nepal an interesting case study is the many ways in which sexual and gender minority peoples have been able to advance a progressive legislative agenda and reform the state's gender and sexual policies despite the prevailing conservative social environment regarding attitudes toward sexuality and gender 'difference'. The present study seeks to explore and understand this context in respect of lessons that may be learned for development practice and legal advocacy for sexual and gender minority rights internationally.

A key point of interest is that the legal discourse in Nepal references comparative international cases 'to establish gender-variant, but not necessarily third gender people as "natural" and therefore deserving of citizenship and rights' (Bochenek and Knight 2012: 12). An account of the legislation arising from *Pant versus Nepal* is included later in this document. Here it is relevant to note that the appeal to 'nature' and sexual and gender minorities as 'natural persons' in these terms is progressive, and in particular is one that may be interpreted as not fixing specific terms of identity in order to define rights for sexual and gender minority persons.

And yet, any legal discourse of this kind inevitably entails a certain kind of essentialism in naming sexualities and identifying sexual subjects. Even if the terms used in law are relatively open, analytical issues arise given that current and progressive social analysis is concerned with understanding sexualities and contemporary (same-sex) sexual subjectivities as conceived and made viable in contexts of socioeconomic transformation, modernity and so on. From this point of view, tension emerges in respect of understanding a progressive legal measure to advance gender variance (and sexual difference) in Nepal as *natural* versus a progressive approach in social theory and development work, which we advocate needs to 'de-essentialise' analytically static approaches to gender, sexuality and culture, better understanding these as facets of *social and economic transformation*. This is crucial for social research in order that it might better reflect the effects of social and economic development practices as they inform and affect contemporary gender and sexual subjects and their wider wellbeing. In exploring this issue in this report the intention is not to critique the appeal to nature in the Nepali legislation, which we recognise as progressive. Rather we aim to consider the current legal context in respect of research on the changing socioeconomic and cultural context of gender and sexual minorities in Nepal.

2 Methods

The case study was undertaken from November 2012 to January 2013 and involved interviews with key stakeholders from national and international NGOs working directly or indirectly on sexuality and rights in Nepal. Many national and international stakeholders conduct their work within an HIV prevention framework and draw a direct connection between the human rights of sexual and gender minorities and HIV transmission rates. Other respondents included people working in higher education (in gender studies), independent researchers, government officials and the private sector.

A principal agency in the present case study was the Blue Diamond Society (BDS), a registered health promotion and HIV prevention organisation that also works on rights and advocacy for sexual and gender minorities in Nepal, founded in 2001. Whilst not a formal partner in the research, participants and some of the respondents in the study were from among the constituency that BDS works with. Initially founded in response to the need for targeted HIV prevention work for men who have sex with men and transgender people in Nepal, BDS has become the primary advocate for legal and constitutional reform regarding sexual and gender minorities in the country. The director of the BDS, Sunil Babu Pant, is an openly gay activist and a former member of parliament (Nepal's Constituent Assembly). Despite the organisation's significant achievements, however, the present research coincided with a particularly difficult moment in BDS' history, that for a time halted the organisation's work and appeared to threaten future advances and reforms for sexual and gender minorities in Nepal (Human Rights Watch 2013).

The present research sought to explore the lives and life-worlds of sexual and gender minority persons in Nepal, as a means to ground the study in the day-to-day realities of people's experiences, attitudes toward the state, power and so on. As such, a series of focus group discussions (FGDs) were arranged with a cohort of 25 gender and sexual minority persons from BDS' networks living in Kathmandu, the principal study site. Participants variously self-identified as transgender, third gender, *meti*,¹ gay, or lesbian throughout the research as a way to communicate to researchers their general sexual or gender feelings, but their self-identifications should not be mistaken for fixed subjectivities that fall within prevailing frameworks for sexual and gender minorities, such as LGBTI. Oftentimes in research of this kind participants will self-identify differently when speaking to external researchers and avoid using local subjectivities in order to more accurately convey their sexual and gender feelings (FGD). In this sense, self-identifications cannot be taken as permanent or fixed and should be understood within a relative context, premised in part on whomever people are interacting with. Moreover it is important to recognise that the subjective attribute of human sexual experience and being are not reducible to labels or identities, but are characterised by attributes that exceed simplistic categorisation. This has been an important realisation for HIV prevention, for example, stressing dissonance between *actual* sexualities and sexual risks and the popular terms used to designate sexual subjectivities and practices in any given context (Boyce *et al* 2007). This is also intrinsic to the analysis of sexuality and rights internationally, especially in terms of recognising that

¹ The term *meti* designates a feminine self-identified biologically male subject who has sex with other men and who is archetypically associated with the penetrated role in anal sex. The archetypically male sexual partner of *metis* is referred to as *ta*. This binary gendered framing of masculine and feminine active and passive male-to-male sexual roles mirrors terms found elsewhere in South Asia (predominantly *kothi* and *panthi*) as indeed gendered male-to-male sexual roles found elsewhere. The reification of these gendered types in the context of HIV prevention for men who have sex with men has been much discussed and critiqued, especially in respect of the limitations for recording other ways of conceiving same-sex sexualities and gender variance in HIV prevention interventions, and the presentation of a cultural stereotype as if this represents the *actual and inevitable* framing for determining sexual risk. This essentialism is seen as problematic because it is based on an overly simplistic view of the relationship between language, sexual bodies and practices.

rights-based discourse inevitably entails inclusion for some and exclusion for others, or they may only represent people partially. As Correa, Petchesky and Parker have observed in reference to Derrida, rights are imperative but always insufficient, which is to say that they may be necessary for social justice but they lack sufficient subtlety to address everyday power relations, inequalities and so on (Correa, Petchesky and Parker 2008: 151–4).

Against the background of these issues, participants in FGDs explored their lives and sexualities along with issues pertaining to prejudice, social discrimination, relationships of intimacy and trust, and legal and social attitudes towards sexual and gender minorities in Nepal. The overall aim was to develop a portrait of the prevailing social and cultural scenarios, as based in actual life experience, and as relevant to the wider study of legal and constitutional contexts. In order to facilitate the insights of FGD participants, we used a participatory creative methodology based on work carried out with sexual and gender minorities elsewhere (Boyce and Hajra 2011). Participants were given basic 'point-and-shoot' cameras as a means to document their life experiences and explore various research themes. During FGDs they were then asked to group the developed images into narrative relationships pertaining to topics such as discrimination, identity, protection, family and so on. This method catalysed nuanced, in-depth discussions of relevant research issues, based in their world-views. Participants also used the photographs to create storyboard narratives of their experiences and lives that gave a grassroots perspective of BDS and its history.

This methodology allowed researchers to engage in a new way that encouraged participants to speak of themselves and their experiences in a context that sought to empower them to both create and interpret their lives for themselves. Participants were not the objects of the photographic research but agents, developing their own creative means of representation and engagement, and vitally informing the research project in these terms. One respondent reflected on the process and the agency it had given the group of participants:

This whole process has been very good. All the categories we had to put photos under are all happening in real life. Just like the last person said, photographs speak for themselves. We are also speaking for ourselves. We have shown through our photos the inequality, the torment that is happening in our society. I learned to express a lot of things through this group activity, but we should have the courage to talk in front of any group not just here. Some of our friends have a really hard time expressing themselves, but through this session, with a photo, it's a big deal that they were able to express themselves.

This general sentiment was shared by the group, one of whom several months later commented that he had begun to increasingly use photography in his reports to reflect what he means. This participatory approach therefore brought considerable nuance to FGD discussions, and ownership of the research amongst participants. Photographs from the research will be incorporated into a website as an ongoing collaborative component of the project developed with research participants. These will likely be available online in the near future, although this will be decided and determined by the research participants who took the photographs in discussion with the authors.

3 Analysis and findings

3.1 Legal context: Social change and sexual subjectivities

Debates concerning the legal status of people who practise same-sex sexualities or who self-identify as transgendered or ‘third gender’,² have become increasingly central to a range of development and human rights agendas and actions internationally. Nepal has been at the forefront of such actions, as sexuality and gender issues have increasingly been brought into national debates and legal reforms since the signing of the Comprehensive Peace Accord in 2006, (an agreement signed between the Government of Nepal and the Unified Communist Party of Nepal (Maoist) that officially brought to an end a decade of civil war.) Nepal is often noted as a progressive case in international arenas, for having ratified equal rights and recognition for sexual and gender minorities. Against this background, however, subtle and explicit pejorative social attitudes toward gender and sexual minorities persist in Nepal. At the time of preparing this report, for example, Nepal was hosting a UN regional seminar on ‘Human Rights, Sexual Orientation, and Gender’ (22 March 2013) where the progress concerning the social position of sexual and gender minorities in Nepal over the past decade was highlighted. And yet that same occasion was used by Sunil Babu Pant to draw international attention to the very recent rise in state discrimination against and intentional targeting of sexual and gender minorities in Kathmandu by specific parties within the Nepali government:

in Kathmandu the ‘authorities’ are giving us – LGBTIs – a hard time – giving misleading information to media, not renewing Blue Diamond Society’s operating licence and thus causing a negative impact on the national LGBTI population as most of the programmes that benefit LGBTI are stopped. Kathmandu Police have been intensifying arbitrary detention of LGBTI people and charging them with ‘public nuisance’ charges and bail of more than US\$350 per person – the total sum of bail paid by detained LGBTI members in just last four months was some US\$9,000 – which is too high for many to pay. Transgender [people] are having to take loans to pay the bail amount and to repay the loans are having to seek more sex work. This is unacceptable. (Sunil Babu Pant, 22 March 2013)

Pant used his speech to stress that any concerns regarding putative corruption in respect to his directorship of BDS (the reputed reason for the refusal to renew BDS’ licence to operate) ought not to affect the work of BDS or its employees and that formal charges should be made against himself if the government believes him to be guilty of corruption. In the interim, BDS’ important role in advancing social justice issues through social support and HIV prevention projects for sexual and gender minorities in 31 districts across Nepal has been severely disrupted until the organisation’s registration is renewed because until then it cannot receive any funding. Inasmuch as BDS’s work may appear increasingly well established throughout Nepal, therefore, the present moment highlights the potential precariousness of BDS’ situation and underlying vulnerabilities in the social circumstances for sexual and gender minorities. BDS’ current situation demonstrates that despite a wider political consensus on the issue of sexual and gender minorities’ equality, human rights organisations, advocacy campaigns and legal reforms can be highly vulnerable even with significant international support and monetary aid supporting such campaigns. Thankfully, the registration status has recently been renewed after almost six months of bureaucratic and court disputes; however, the hiatus severely hampered BDS work, disrupted ongoing

² There is a plurality of terminology used to refer to different sexual and gender subjectivities in Nepal. While many like *meti*, *samalingi* and ‘third gender’ are often used interchangeably, others connote different subjectivities that are often fluid. See for example Wilson *et al.* 2010.

projects and donor relations, and meant that many of its staff have gone unpaid throughout the dispute.

Alongside the current discrimination being directed at BDS and Nepal's sexual and gender minorities is a recent history of progressive legal reforms that affirm the rights of various same-sex sexualities and third gender people. The most significant reform occurred on 21 December 2007 when the Supreme Court of Nepal issued an order to the government to issue and develop legislation that would remove discrimination on the grounds of same-sex or intersexuality and transgender self-identification and provide gender-variant people full recognition as citizens on official documentation (Nepal Supreme Court 2007). This was issued in response to a writ filed that same year by BDS, Cruseaids and other activist organisations operating in Nepal.

This measure came about, at least to some degree, as one of a number of consequences of the 2006 Pro-Democracy Movement in Nepal, which gave new social and political legitimacy and impetus to rights-based policy measures, based on a range of claims related to caste identity, ethnicity, gender and ultimately sexuality (Diswas 2008). More recently, BDS lobbied to include the recognition of people identified as third gender in the 2011 national population and housing census, becoming the first country in the world to add a category in addition to male and female. The Electoral Commission has also included 'other' – *anya* – as an option for voter registration. The Ministry of Education in coordination with BDS also plans to include same-sex sexualities and gender-variant issues with a positive and progressive focus in the national sexual and reproductive education curriculum for schools throughout Nepal. The Supreme Court also mandated a study committee to investigate the possibility of same-sex marriage and/or union policies, but for the most part such discussions are not to the fore of current activism in Nepal. A report on the issue is reported as drafted but it remains unpublished. Currently the Constituent Assembly is dissolved after the interim government expired with the failure to ratify a new constitution.

The legislative changes and propositions outlined have taken place in the context of profound shifts in the post-monarchist Nepalese state, wherein aspirations to reconfigure the contract between people, law and polity have created spaces within which 'new' discourses of sexuality and rights have emerged and consolidated amidst contestation. These processes have themselves taken shape as outcomes of longer-term political reforms and social changes that have occurred over the course of Nepali history. The 1990 People's Movement in Nepal brought an end to the absolute monarchy and opened many social spaces and opportunities to discuss issues of sexuality, gender identity and ethnicity that had previously been suppressed. Women's rights and social status were some of the first targets for reform in the new constitutional democratic state and proactive policies to improve women's representation in the House of Representatives were implemented. Whilst these measures served to increase the number of female candidates, women's representation in parliament was minimal until the 2006 Comprehensive Peace Agreement (CPA) reserved one third of the seats in the interim government's Constituent Assembly. Overall, women still face discrimination and challenges across Nepali society, but the rapid pace of reform regarding women's participation in state and social processes highlights the speed at which social attitudes and state policies regarding women are changing.

These formative actions regarding women's social position and rights created possibilities for minority sexual rights actions in Nepal, which despite the absence of sexual rights reform during the early 1990s, were foreshadowed in the social changes implemented and augured in the women's movement (as, for example, acknowledged by Sunil Pant). Another respondent in the present research, Mira Misra (a university lecturer of Gender Studies in Kathmandu), noted:

It [sexual and gender minority rights] was started but it was not visible. It was not crystallised I think. Because since 1990, not only [for] sexual minorities, the definition of sexuality in Nepal also started changing. Sexuality in Nepal for ordinary people and even in the legal system was sexual procreation after marriage. That was the sexuality – very simple definition. The person, the couple should have sex and have children after marriage. And everything else before that should be restricted even by culture, by family and even by the state. That was the theme. Since 1990 these things gradually changed.

As new possibilities for (hetero)sexuality, family life and so on emerged amidst the social changes of the 1990s, new social and cultural possibilities for same-sex sexual lives, rights and self-identity were seeded. New recognition of minority sexual and gender rights has thus consolidated in the wake of progressive development concerning women and gender, in some ways paralleling the development-oriented, rights-based work that has played an intrinsic part in social progress for the current multi-party government. Such measures have been widespread and are outlined within a number of articles in the interim constitution that propose equal rights for a number of marginalised ethnic and low-caste communities, and equal pay regardless of gender. These political frameworks provide a conceptual template within which advocacy for same-sex and transgendered sexualities and rights can be inserted, built upon and made sense of, popularly and legislatively. Sunil Babu Pant, director of the BDS, commented on these matters in interview:

Compared to countries like Uganda, or Muslim countries, there is no violent attacks or that kind of things. That does help. And then I think years of work on civic rights, including women's rights or rights of people with disabilities. So people are educated in one way or another, if people are disadvantaged, that the society has responsibility to them. So I think I will give credit to those movements that have started here much earlier than LGBTI movement. It made our movement much easier... I mean all movements for the last 40 years, the *dalit* movements particularly, and the disability rights movement.

Despite, as noted above, something of a recent resurgence of harassment and violence toward people of transgender in Nepal, here Pant draws attention to the fact that, compared with other state contexts, and even with recent concerns, Nepal has in many ways evinced a positive political and legislative environment for sexual and gender minorities in relation to other social movements. Aside from providing a discursive and political blueprint similar to other social movements, legislative and national policies are being reformed alongside a more profound reconfiguration of culture and society in Nepal. The sociologist Chaitanya Misra has described contemporary Nepali social changes as an

ensemble of historical shifts and contradictions at multiple levels of social organizations, for example, the levels of the individual, household, class, gender, caste, ethnic groups... in addition to those at the more public, state and international levels – which have led to a specific form of political transition in Nepal. (Misra 2007: 11)

Contemporary social changes are characterised by the waning of pre-capitalist political-economic forms, the growth of a market economy, democratisation and associated new forms and freedoms for individualistic self-expression. Many livelihoods and lifestyles are emerging that are atypical according to the 'traditional' cultural expectations and pressures of the family, kinship and so on and that allow new forms of individual expression to take shape (Misra 2007: 21). Much of the social space for non-traditional livelihoods has arisen out of middle-class aspirations, market choices and a trend towards later marriage in rapidly urbanising Kathmandu. Even as the urban middle classes remain a relatively small but growing demographic in Nepal the cultural and political influence of such lifestyles is socially

significant, considering their proximity to political and social power centres, such as Nepal's capital Kathmandu, and ability to contribute to and shape social debates. Even among less prosperous people new options for work, travelling to live in cities and so on can engender new kinds of freedoms (see Liechty 2002 for further discussion of emergent middle classes in Nepal).

This is not to posit that 'traditional' or more conservative attitudes toward familial and social obligation and so on do not continue in Nepal, as such values and expectations persist. However, they increasingly exist in a complex relationship to changing values. The traditional expectation of most individuals in Nepal was early marriage immediately followed by early childbirth, especially for young women in their teenage years and early 20s who had even less of an expectation to financially support their families. However, middle-class aspirations for a better quality of life and higher economic status increasingly outweigh the perceived benefits of following a traditional normative familial pattern. Outmigration for employment and education from villages and small towns to cities increasingly plays a larger role in Nepal's economy, comprising 23 per cent of Nepal's GDP in 2009, and many youth now face pressures to go abroad to participate in the remittance economy or finish higher education rather than start families (World Bank 2011: 14). As a consequence of this shift, urban Nepali youth in general are more informed and potentially empowered, in not only choosing who they end up marrying but when they get married as their social bargaining power grows with their earning power, age and education. These social changes afford more time and social space for people's sense of sexuality to form, and many youth find more personal space to explore sexual experiences and have more choices in urban and international settings. It is within this evolving social, cultural and economic context that social space for same-sex sexualities and transgender persons has opened up (interview with Mira Misra).

While the new legislative context for same-sex sexualities in Nepal can be interpreted in terms of Nepali-specific social change, it can also be seen within a larger context of shifts in international politics concerning same-sex sexualities. 'Modern states', are increasingly prevailed upon to 'recognize a sexual minority within the national body and grant that minority rights-based protections', as a symbolic marker of a democratic, neoliberal polity (Franke 2012: 19). Through such policies states can signal that they are aspiring to take their place within a progressive international community, which can accrue benefits from trade and development aid (Franke 2012).

A legislative issue arising in this context is that terminologies pertaining to 'third gender' and same-sex sexualities have generally been 'essentialised' and combined in relevant state discourses and NGO actions in Nepal, such that, for example, the Supreme Court of Nepal mandate described those of minority sexuality as

natural persons who, due to the natural and biological factors, may be attracted toward the same sex rather than the opposite, even though they may be born either as a male or a female, and based on their changed gender identity cannot pursue their business, including to establish conjugal life.

In signalling protection and enshrining legal rights, this discursive paradigm signals same-sex and transgendered subjects as at once included within a mandate of social recognition and protection whilst they are simultaneously disciplined and defined as naturally, biologically and substantively *different*. As such, the prevailing legal standpoint arguably iterates and compounds social and cultural marginality within the very legislative frameworks designed to effect recognition of gender and sexual plurality.

Moreover, the tendency in current debates and legislation is to conflate same-sex attraction with opposite gender identification, as can be seen in the Supreme Court statement, which confuses same-sex sexual orientation with issues pertaining to gender at birth and

aspirations for gender transformation. In part this arises from a social context in Nepal (as in many countries in South Asia and elsewhere) in which same-sex attraction *is indeed* for many people associated with a gender-variant self-identity and performance. This may be experienced as an essential attribute of selfhood, or as in some ways a self-consciously chosen performance with, for example, variant presentation of self as masculine or feminine, according to social context, or the explicit avoidance of gender-determined roles. In respect of the legal and constitutional scenario in Nepal, it is important to note that these social factors are downplayed in legislation in favour of an essentialised presentation of the gender and sexual minority subject. This may help to consolidate recognition of such persons in law, but potentially at the expense of real attention to people's social circumstances and potential fluidity, and variability in terms of sexual practice, subjectivity and so on. The sexual and gender minority subjects specified within Nepali legislation are seen as determined by nature as opposed to self-conceived in respect to the many factors that influence sociocultural values pertaining to sexuality – such as life circumstances, choice, lack of choice, socioeconomic transformation.

In order to understand the appeal and the 'progressiveness' associated with being labelled natural persons according to the Supreme Court decision, it is necessary to understand Nepal's social context wherein sexual and gender minorities are often perceived as a social *vikriti* – a state of deterioration that can connote disease, degeneracy, deformation and malformation. The legal term used to characterise sexual and gender minorities through the Supreme Court – *prakriti* – is often understood as a natural state of being that is normatively correct. *Prakriti* can also refer to both male and female sexual organs, further suggesting connections between sexual normativity and a 'state of natural being'. The assertion that sexual and gender minorities are natural can have as much to do with their characterisation as being unnatural and thereby not deserving the same equality as 'natural persons'. Sexual and gender minority rights have therefore been partially predicated on the idea that sexual and gender minorities are as natural as other citizens, or in the words of the Supreme Court's decision, 'it seems obvious that the petitioners are natural persons'.

It is this appeal to nature, and the essentialised nature of sexual difference, that is presented as a strong basis for legal protection, much in the way that progressive legislation in terms of caste, tribe or ethnic grouping in Nepal (again, as elsewhere in South Asia) has been articulated on grounds of essential indigenous rights. Complexities arise from this legal context in terms of sexuality, however. Compounding rights on the basis of sexual orientation and gender identity in these terms propounds what might be thought of as a deterministic view of the sexual subject, as if she or he (or otherwise) is clearly discernible, immutable and explicitly self-identified. Whilst some people may well be able to avail themselves of the law in such terms, the prevalent social scenario in South Asia (Nepal included) is that the majority of those who practise same-sex sexualities typically do so in variance with a sense of clearly defined sexual identity or selfhood being attached to such practices (see for example research elsewhere in South Asia – Boyce 2012; Khanna 2009).

Social and legal reform on grounds of same-sex sexuality and transgender inevitably require making such people socially visible, such that they might become legally and constitutionally tenable. Such actions have been successful in Nepal, and in turn the emerging prevalence of a rights-based discourse in terms of sexual and gender minorities has had an effect on Nepali culture and society. If subject categories such as *meti* or 'third gender', are indeed fixed and immutable descriptors of gender and sexual minorities as opposed to discursive constructions associated with specific contexts and temporalities, the popular perpetuation of such terms of debate can further essentialise the language used in legal discourse. For instance, 'new' discourses for the ascription of same-sex sexual subjectivities in Nepal and elsewhere might be associated with forms of individualism conceived in relation to neoliberal economic developments.

This is not to argue that the legislative environment seeks to coerce people into identity categories or ascribed labels, since as noted the appeal to nature in law is one that allows for fluidity. However, it is to recognise the law in the context of social change wherein certain kinds of discursive terms are becoming increasingly established and essentialised in research on (same-sex) sexualities in Nepal. Thus, for example, recent research on the legal utility of the third gender category in Nepali law has emphasised the range of identity labels that may be encompassed within this term, including *meti*, *ta*, transgender persons, intersex and others (Bochenek and Knight 2012: 20). Such capacity for diversity of recognition is welcome, yet for development practice and social analysis, approaches that better interpret the relationship between law, discourse and sexualities in more analytically nuanced and empirically grounded terms are imperative. Even though the law may not exert pressure upon people to confirm to any kind of 'sexuality type', it can be understood as a framework wherein sexual subjects might nonetheless actually be most predominantly recognised in terms of identity categories, because it is these that allow for advocacy and representation. Such approaches have strengths, but they also entail limitations, as expressed in findings from research with activists working in a similar scenario pertaining to sexuality and law in India:

Interviewees strongly expressed that rights would necessitate the formation of concrete and air-tight identity compartments, whereby individuals would have to become 'mothers', 'homosexual men', 'Men who have Sex with Men (MSM)', 'sex workers', for example, and claim protection and rights on the basis of those identities. In this scenario, as one Delhi-based activist argued, 'you can't hold onto any belief in the fluidity of sexuality, or the intersections of sexuality and power. It all becomes about the category you fit into, and we re-create another set of differences and hierarchies. (Boyce and Khanna 2011: 10)

The present study sought to address such concerns as they might pertain to the contemporary circumstances of gender and sexual minority people in Nepal through research that explores terms of identity, sexual subjectivity and legal representation *with* such people, in terms grounded in their own complex social realities, and in respect of their social contexts and networks. This was over and above an approach that sought to describe sexual lives and life-worlds in respect of presumed meanings associated with identity categories.

3.2 Networks: Transnational contexts and local processes

The emergence and development of rights-based advocacy and legislative change for sexual minorities in Nepal can be thought of as in some ways a 'networked process'. This is to say that the relevant issues and modes of social action have taken shape in the context of connected activities at national, regional and transnational levels. Indeed, in some ways, Nepal can be conceived as one of the major international examples of transnational influence on the legal status of sexual and gender minority persons, and conversely as one of the most significant local or regional cases to have been instrumental in advancing relevant international debates and policies. These issues have in turn been premised on complex interpenetrations of legality, culture and subjectivity in the context of minority sexual rights in Nepal – themes that have legacies in the early days of social action for men who have sex with men and people of transgender in South Asia, especially in the context of HIV prevention.

The progressive legislative agenda of the Nepalese State regarding sexual and gender minorities is one that has emerged out of some degree of international influence, especially over the last decade, at a time when new state mechanisms were emerging in Nepal and new relationships with international development organisations have evolved and consolidated. Sexual rights work in Nepal has emerged within this 'international milieu'. At

the same time, work on these issues has been strongly developed by Nepali activists, and this in turn has influenced international debates and agendas, with Nepali activism being influential and significant transnationally. For example, Sunil Babu Pant was one of the 29 signatories of the Yogyakarta Principles. The development of rights-based frameworks for sexual and gender minorities in Nepal can be understood as recursive in these terms, informed by international flows of ideas concerning sexual and gender minority rights but important and influential within these same milieux.

Against this background, the broader cultural environment for the recognition of same-sex sexualities and transgender/third gender rights in Nepal appears to be narrow, with these issues featuring little in the consciousness of the population as a whole. This can be expressed in terms of a general lack of common cultural understanding of third gender and same-sex sexuality issues, which might be manifested in terms of indifference (to the rights of such people) or indeed as discrimination. This is not to discount very genuine social progress on these matters in Nepal, but to set this in context. Ruben Del Prado, Nepal Country Director of UNAIDS (Joint United Nations Programme on HIV/AIDS) noted in an interview for the present research:

From the outside, Nepal is a champion when it comes to addressing the issue. I think that Nepal is the first country in the world that has identified the rights for non-male or female, third gender people, and has done much professional advocacy, legal work. As for what comes next, I am always worried about policy changes if it just ends there. If societal changes are not part of those laws and policies. So I think that there is a little bit of lag between what has been accomplished at upstream level and society's readiness to accept sexual minorities. I am very concerned about the way officials deal with sexual minorities.

One of the most specific and immediate catalysts for the development and advancement of same-sex sexual rights in Nepal was work related to HIV prevention for men who have sex with men and transgender people. This was taken forward most strongly from approximately 2001 onwards. Among various findings, research conducted at this time pointed to the need to understand same-sex sexualities and sexual risks in a culturally intelligible manner, sensitive to local discourses, whilst avoiding the pitfalls of cultural essentialism and the danger this might present to effective HIV prevention. (UNAIDS 2011, Boyce and Babu Pant 2001).

For example, terms such as *meti* seem to be grounded in a cultural context but their fixing within an HIV prevention paradigm can effect a dissonance from the lived realities of sexual lives. This mirrors issues with local language use for describing sexuality in much HIV prevention work. In Nepal (as can be the case elsewhere) the language used in such work may be derived from *local* informants and developed in respect of discussion with *local* health workers and activists, but once such language is reified into health promotion terminology it tends to become discordant with the ways sexualities are lived, felt, discussed, or indeed not discussed in a cultural context such as Nepal (Pigg 2005). This points to ways that, even inasmuch as development initiatives may be keen to advance culturally sensitive, locally informed discussions regarding sexuality in health-based work and social justice interventions, the problem of language and terminology is especially complex.

Conversely, however, in much sexualities development and rights work internationally, explicit terms such as LGBTI may not be rejected, and indeed may be used strategically, as a means to organise social action. Sunil Babu Pant described BDS networked activities in Nepal in the following terms:

Sunil Pant: The whole thing of transformation, changes here, there are a lot of bad things, violence, people were killed during the insurgency, Maoists' People's War. But these changes allowed the oppressed voices to come forward and then we suddenly found that there were so many oppressed voices and communities that just needed to understand each other and we found support from each other. So it's multiple factors that have let this movement be successful. But definitely our strategy, the communities, the visibility. From early on we were very clear that only small voices from Kathmandu would not lead this movement very far. So realising that, we were going to the grassroots, smaller towns, and villages and then creating networks of LGBTIs there. And once people see, who have never left the village, they are still coming out and they see it's LGBTI are their neighbours and their families.

Paul Boyce: You've got networks all over the country?

Sunil Pant: Almost all over the country. Especially any district where there is significant population, even smaller townships and cities we have. So we are in 40 districts and 43 towns and cities. That covers almost every town and city, significant cities and towns in Nepal.

In this description, terms such as LGBTI have been instrumental in network building and regional social action in Nepal. Rather than provoking a hostile reaction the portrayal here is of LGBTI as a discourse that has enabled grassroots action, as opposed to preventing it and as opposed to being culturally insensitive. This observation necessitates wider reflection on the relation between sexuality, discourse and social action. Sexualities are culturally constructed, via terms through which a sense of sexual subjectivity may be described and 'known' as one's own. Inasmuch as a sense of sexual subjectivity may be claimed as intrinsically personal or intimately relational, sexuality is also lived in respect of the wider 'scripts' or cultural framings of sexuality that people encounter in their day-to-day experience. Put simply, people will not identify as gay, lesbian, transgender or so on unless they are living in a sociocultural context wherein such terms might be popularly used or available as a means to come to an understanding of oneself as sexual. This is the issue that underlies the rejection of LGBTI discourse by activist networks in some non-Western contexts, since prevailing international statements and policy paradigms tend to employ LGBTI as a universal framing for designating sexual and gender minorities, rather than recognising the terminology as a discourse arising in specific social contexts and as one that people may wish to apply with flexibility.

This does not mean that LGBTI terminology and activism are not now dispersed in non-Western countries, and indeed they are salient among some groups of people in Nepal – especially notable among some urban middle-class people and those involved in activism for sexual and gender minority rights. Some of the participants in the present research used this term to express their own sexualities in some contexts, even though they did not otherwise speak English. However, it is important to consider that where and when such terminology is used, it ought to be interpreted as an attribute of social change and as a specific communicative choice – a marker of how sexualities are produced *through* changing language, discourse and socioeconomic aspirations, as opposed to existing independently of these. Moreover, in seemingly ascribing sexual subjectivities to terms that may be most intelligible within a globalising discursive frame concerning sexual and gender minority rights (for example by describing oneself and others as 'LGBTI') people may simultaneously indicate the salience of such a discourse but also its 'subjective remoteness'. LGBTI terminology may be important for local activism as conceived amidst transnationally intelligible articulations of sexual rights, yet the same terminology may also be potentially dissonant in terms of peoples' actual self-understandings and life-worlds. Exploration of the networking of ideas pertaining to LGBTI rights in Nepal offers a critical insight into the

recursive relationship between sexual subjectivities, rights and language, nationally and internationally. As noted, it is vital to understand ways in which constitutional rights for gender and sexual minorities have been presented legislatively in terms that may be seen to essentialise sexual and gender minorities, in a manner that appeals to *nature* as opposed to conceiving rights in the context of social transformation *per se*. This mirrors the ways in which LGBTI rights are presented as inviolable in humanitarian development and rights practices. Inasmuch as this may be politically progressive as a strategy for advocating rights in terms of sexuality as inviolable it may also displace attention away from the cultural nuance, subjective variability and political economies of gender and sexual minority experience, and the irreducibility of this to common, fixed and uniform terms.

3.3 Actors: NGOs and people

As noted above, central to Nepal's recent political reforms on sexual and gender minority rights is the Blue Diamond Society (BDS) and their work with HIV prevention, advocacy and outreach. Established by Sunil Babu Pant in 2001 as an HIV prevention organisation working with sexual and gender minorities, BDS now conducts a range of activities primarily related to HIV prevention, such as condom and lubricant distribution and rights-oriented advocacy issues, including HIV awareness campaigns, peer support for sexual minorities, and legal counselling in 31 districts of Nepal (Blue Diamond Society 2012). Initially, BDS' registration as an HIV prevention organisation working with sexual and gender minorities, as opposed to an advocacy-based organisation, was necessary because of the government's hesitancy to mandate an organisation advocating for a population that was and still is largely marginalised and misunderstood by Nepali society. BDS' registration also occurred five years into Nepal's decade-long civil war at a time of heightened political and social instability.

The principal focus on HIV was also in concert with prevailing funding paradigms as international donors began to fund HIV interventions in Nepal at that time and with an increasingly consolidated understanding of 'men who have sex with men' (MSM) and transgender peoples as an 'HIV risk population'. This mode of funding paralleled other strategies in South Asia, where interventions into social and sexual vulnerabilities in contexts of male-to-male sex had helped to consolidate international funding for large-scale community-based interventions in India and Bangladesh. Because of the global HIV pandemic and growing access to funding for HIV prevention work, BDS was able to quickly establish itself as a large nationwide organisation, especially as no other organisation was working on these issues in Nepal when funds began to be distributed for larger-scale programmes. Through their work, BDS was able, for the first time in Nepal, to begin to formally network and educate Nepal's sexual and gender minorities through development interventions such as HIV and sexuality awareness campaigns and condom distribution programmes. BDS now employs over 750 outreach workers across the country that act both as contacts for sexual and gender minorities and representatives of their communities across Nepal.

Between the growing social and organisational networks and sponsored researches on Nepal's sexual and gender minorities, BDS was able to articulate and advocate for greater social and political understanding and inclusion. Despite having had anti-sodomy laws at one time, sexual and gender minorities in Nepal never faced a strong legal tradition of anti-sodomy laws unlike elsewhere in South Asia nor a strong presence of religious orthodoxy that condemned same-sex sexualities and gender minorities:

Hinduism is very different from Nepal to India. India has very orthodox fundamentalism, which is not here. Very tolerant and also these religions are far away from politics here. They are very vocal and they operate like a political party in India, which is not the case here. I think when the Ranas formulated the first country code, the Muluki Ain, we had a sodomy law. But it was taken out, maybe 40 years ago.

Decriminalisation happened already 40 years ago without any movement because the rulers thought it was useless. Nobody was prosecuted; it was hard to find anyone. So we did not have in the last 40 years any law that criminalised but you can consider the very abusive language that was used. (Interview with Sunil Babu Pant)

However, the lack of both a strong legal tradition outlawing same-sex sexualities and the implementation of the little legal framework that did exist does not reflect the historical or contemporary social attitudes of greater Nepali society, which might be thought of as heteronormative, given, for example, predominant social and familial pressures to marry, bear children and so on, even if the social values associated with such expectations are changing. Despite the social tendency to conform to societal standards, BDS and Nepal's activists did not have to worry about pre-existing legislation that directly restricted the rights of people living outside heteronormative social expectations.

While stigmatisation and social marginalisation were and still are experienced by sexual and gender minorities in Nepal, different sexual and gender subjectivities are more or less likely to be socially stigmatised and discriminated against based on the social 'visibility' of their presence. For example, *metis* are more likely to be identified because their gender identity and expression (as female or effeminate) contradicts social expectations from their family and larger society. On the other hand, their male partners, locally referred to as *ta*, are oftentimes only socially identifiable through their often concealed relationships with *metis* because they are more able to conform to social expectations and gender norms. As a result of this dynamic, *metis* and other transgender people are often socially marginalised; sometimes even by their male partners who frequently deny any interaction with them. They may struggle to find employment, outside of a narrow range of professions associated with the entertainment or beauty industries, because employers are less likely to take on someone who performs in terms of explicit gender variance. As such, many *metis* and other transgender people may be disproportionately affected by poverty and social isolation.

Given limited opportunities to earn a living otherwise, many *metis* and other transgender people are more likely to engage in sex work, and thereby often suffer from enhanced sexual and related risks. While there are differing understandings of sex work and its role in sex workers' lives that this research did not explore, participants stressed the narrow field of choices for work and livelihood that are defined by a wider set of social prejudices (FGD). Several respondents spoke at length about employment and work and its role in determining their lives:

But what is the goal of LGBTI? What do we need? The main purpose of BDS is to give opportunity to people like us. We can do anything if given the opportunity. If we go to the traffic police, I am sure we can also work hard and do a good job. If they let us speak in programmes or in front of others we could participate and speak to everyone. We could work in banks and other jobs if only they gave us this kind of opportunity. What we expect from the government is that we hope that we can work in different companies and positions like the Drinking Water Municipality or any of the government offices.

Here, employment discrimination and the narrow options sexual and gender minorities face are articulated as being at the centre of the movement and a huge aspect of achieving social equality; it is also notable that many respondents thought that the government should provide them with employment because of their sexual and gender subjectivities – a stance that mirrors advocacy for progressive employment action for scheduled castes and ethnic groups. Even though popular culture is generally not marked by widespread homophobic or 'transphobic' beliefs in day-to-day life, prevailing negative social attitudes and pressures to conform to heteronormative lifestyles play a large role in shaping the daily lives of sexual and gender minorities. The social isolation that many sexual and gender minorities experience

and are described in focus group discussions has created space on the periphery of Nepali society where sexual and gender minorities openly exist within prescribed cultural roles.

Most notable and researched is the South Asian community and tradition of *hijras*,³ who have historically existed ambiguously in relation to larger society. *Hijras* were not historically a part of Nepal's social consciousness and primarily lived in border regions in the southern plains of Nepal. For these reasons, many Nepalis understand *hijras*, and sexual and gender minorities, as a largely non-Nepali, 'outsider', or Indian phenomenon and isolated except in prescribed cultural roles and their relations with other sexual and gender minorities who are able to socially conform.

Many third gender-identified people are therefore at the core of BDS' social and outreach networks because of BDS' willingness and ability to publically represent themselves and their identities to Nepali society. Moreover, BDS has offered an important context for employment for sexual and gender minorities as peer outreach workers. Consequently and understandably, issues related to sexualities and gender identities that in some way have necessitated public openness, such as third gender identity, have been at the forefront of BDS' advocacy work because of its need to have openly identified sexual or gender minority participants in their movement. For Nepal's third gender population, the perceived risk of joining an organisation like BDS and formally organising has in some ways been minimal because they already faced discrimination from the police and society on a regular basis because of their gender identity and expression.

In contrast to the social reality BDS was founded in, those who could conceal their alternate gender identities or sexualities have likely perceived a much larger risk in joining an organisation that has worked with such a highly stigmatised issue. Against this background, and in consideration of this, BDS has recently formed a 'gay' advocacy group to raise awareness on less visible sexual and gender minorities, which have yet to receive social recognition in the movement's work. The 'gay group' stands in contrast to the openly identified *metis* and transgender component of BDS' work as none of their staff is currently 'open' outside of BDS networks. The formation of a gay-focused community organisation may be interpreted in response to the growing number of gay-identified men in Nepal, most especially in Kathmandu – a circumstance that reflects changes in discourses and cultural possibilities for sexual identification related to same-sex sexualities. The emergence of gay-identified peoples has been associated with social and economic modernity in many countries. In Nepal, gay identification may have emerged via the large number of Nepali migrants who encounter 'LGBTI' sexualities abroad. In other cases, gay-identified Nepalis may learn of Western sexualities through popular media, and by identifying themselves as gay as opposed to a local sexual subjectivity they are also able to make statements about their economic status and education. Currently, there isn't enough information to determine whether there are any strong connections between gay-identified peoples and factors such as socioeconomic class in Nepal, but such correlations have been significant elsewhere in the world and will be worth exploring in Nepal over time, in respect of ongoing analysis of sexualities and socioeconomic transformation.

Because of their funding for and successful work on HIV prevention issues, BDS has been able to use its networks to represent and advocate for the rights of sexual and gender minorities on a national level. In this sense, donor organisations, primarily bilateral organisations and INGOs (international non-governmental organisations), have played an important role in supporting BDS' work and its subsequent advocacy activities. Since its

³ Found across South Asia, *hijras* are commonly understood as transgender women, traditionally male-bodied, who often (but not always) undergo a ritual castration and play a role in various religious and cultural ceremonies and rites. *Hijra* is a complex subject category, however, and cannot be reduced to simplistic stereotypes.

establishment, BDS has received funds from a wide range of donors ranging from INGOs and bilateral organisations working directly on the issue of same-sex sexualities and gender minorities to bilateral and state donor agencies, including Family Health International, the Naz Foundation International, USAID, DFID, UNICEF, Global Fund and Save the Children.⁴ Without funding for HIV prevention activities from these organisations, it is unlikely that BDS would have been able to build the strong organisational network that has played an important role in its advocacy and outreach work.

On the other hand, while international funding has in many ways provided the financial support for Nepal's movement for sexual and gender equality, donors and international organisations have in some ways struggled to understand the sexual and gender minorities in Nepal outside of the framework of HIV prevention and advocacy work. As a result of funding and research being attached to HIV prevention work, much of what has been written on sexual and gender minorities in Nepal has focused on their potential risk of HIV contraction and transmission. Only recently, with more funding for advocacy-based research and programmes, have new studies been conducted on the discrimination, sexual violence and marginalisation faced by open sexual and gender minorities in Nepal. The primary aim of HIV prevention researches has been to assess and determine the size of 'MSM' populations, conduct bio-behavioural surveys, and assess their overall risk of contracting and transmitting HIV. Alongside the HIV researches that have been conducted, researches pertaining to female-bodied sexual and gender minorities have largely been ignored because they are not considered a 'high risk' population. These researches are predicated on pedagogical frameworks that operate within the context of 'LGBTI' subjectivities that prescribe a language and an understanding that does not necessarily relate to local understandings of sexuality and gender. While some of the most liberal studies incorporate or attempt to deploy local terminologies of sexual and gender minorities, they do so within predominantly Western frameworks of gender and sexual subjectivities. Even where local terminologies are used in researches and surveys, the methodological approaches assume sexual and gender minorities to have static, fixed identities and clear distinctions between sex, gender identity, sexual orientation and gender expression.

With these themes in mind, many FGD participants resisted a typification of their identities and repeatedly demonstrated their interests, passions and concerns about larger social and political issues. When reflecting on the photographic and research process many respondents expressed a weariness or frustration at having been the objects of researches without being given a chance to voice their own understandings and interpretations of their surroundings. Reflecting on the present research one participant noted:

A lot of people took our photos before for different purposes but no one has ever used so many photos of *our own* to make it into a story. It made me really happy. It has been 12 years that I've worked for BDS but never... have I ever had this kind of opportunity... In other trainings they used to lecture us a lot and the questions they asked us were like 'What do you do? Dance?' and 'What do you feel? Sad?'

The feeling of being objectified as a 'research subject' is at least partially related to donor-driven policies and pedagogies concerning 'LGBTI, MSM, and TG' populations in various intervention and sectorial contexts. BDS members also repeatedly commented on the dichotomy in terminology they have to use as part of donor requirements and how they have often been 'subjectivised' as LGBTI populations or MSM when very few of them identify as such, despite being open as a sexual minority, nor perceive their sexuality as part of an MSM discursive framework. One comment was: 'we only use terms like gay and lesbian when we

⁴ USAID – United States Agency for International Development; DFID – UK Department for International Development; UNICEF – United Nations Children's Fund.

are talking to foreigners so that they understand us. Otherwise we use our own words when we talk together’.

Hence, many sexual and gender minorities have resisted static categorisation of their identities in advocacy and outreach work. In order to acknowledge the plurality of sexual and gender identities, their cultural roles and historical presence in Nepal, BDS’ advocacy work at the national level often refers to the entire population of sexual and gender minorities without reference to particular subjectivities. Interestingly, the Supreme Court’s decision in 2007 in favour of BDS and Pant (see Section 5 below) makes repeated reference to LGBTI issues and rights based on international legal discourses and precedents despite the fact that LGBTI-identified individuals probably do not constitute the majority of sexual and gender minorities in Nepal. Identity politics have played a major role in BDS’ advocacy work at the national level, and while local sexualities and subjectivities play a salient role in sexual and gender minorities’ lives in Nepal, they should not be seen through a deterministic lens. In order to better understand sexual and gender minorities in Nepal, it is necessary to examine lived experiences of social and political processes outside of the discursive frameworks of international gender and development paradigms, and to take stronger account of the ways sexuality is conceived in people’s everyday experience.

3.4 Institutions: caste, ethnicity and sexualities

In order to realise how sexual rights have been incorporated into the Nepal state, it is necessary to understand the broader context within which such reforms have occurred. The signing of the CPA in 2006 occurred at a time when women’s rights, ethnicity and caste were becoming increasingly salient political factors at the national level. Promises by the Maoists during the People’s War to create a ‘New Nepal’ that was more inclusive and sensitive to historically marginalised populations featured prominently in the national consciousness. In the aftermath of the CPA, the interim constitution created new quotas and affirmative action policies for women and ethnic minorities. The changes following the civil war and the establishment of a new democratic Nepal opened new social and political spaces for marginalised communities that had previously gone unrepresented in national forums and political institutions.

A key debate that has facilitated the prominence of identity politics in Nepal has concerned the new federal system that will come into effect with the promulgation of the new constitution. Throughout this debate a fundamental question was which ethnic communities, if any, would receive official recognition in the new federal model. As this debate occurred locally and nationally, civil society and the state reflected, at least rhetorically, the broader move to include historically marginalised identity groups in state and civil processes. Educational scholarships were created for low-caste groups and women in private institutions, ethnic organisations formed to advocate for and preserve their cultures, marginalised communities received quotas in the Constituent Assembly, and national protests were launched by various ethnic communities to advocate for the creation of ethnically based federal districts that could be named on behalf of these communities. Essential to establishing any identity group’s claim for state recognition was the need to articulate and authenticate a ‘heritage’ of cultural traditions drawn from a group’s wider set of social, political, economic and linguistic characteristics.

BDS’ advocacy campaign for sexual and gender minorities in many ways followed a similar logic for establishing the legitimacy of their cause and their claim to political rights. There are significant parallels in how sexual and gender minorities articulated their rights *vis-à-vis* a shared group identity, evoking a heritage of traditional cultural roles and histories that appealed to the state’s understanding of sexual and gender minority as another previously politically ‘unseen’ identity group. In a discussion on the movement’s influences and sources of inspiration, Sunil Babu Pant emphasised that their advocacy work was predicated solely

on emic understandings of sexuality and gender and was not influenced by international NGOs and donors: 'We used a lot of our Hindu, Buddhist scriptures, histories, all these things, traditions, festivals. We did not find anything from international [sources]'. This argument in and of itself suggests that the development of the movement was largely a result of traditional processes that have always existed within Nepal's culture and it was only the official state recognition of these respective traditions that was contemporary – a strong parallel to the Nepali academic debates regarding ethnic identities. The desire not to be identified with non-Nepali or international understandings of sexuality and gender is equivalent to the importance given to 'indigeneity' in local ethnicity debates worldwide and in Nepal, where ethnic groups have similarly refuted claims of ethnic self-consciousness being foreign-influenced or inspired.

Cultural traditions and ceremonies in Nepal that either permitted or required the presence of cross-dressing or non-conformist community members are often featured as prominent examples of the historical and cultural presence of third gender people in Nepal. Interestingly, the politicisation of various ethnic minority holidays has also played a prominent role in the public assertion of minority identity groups in Nepal who use these events to assert their identities in public spaces with traditional dances, ceremonies and dress. BDS has taken a similar tack in the celebration of the national equivalent of 'Pride Week' on the traditional Newar⁵ holiday of *Gai Jatra*,⁶ where cross-dressing was traditionally practised. During the most recent *Gai Jatra*, sexual and gender minorities from across the country gathered at public events in Pokhara; present amongst the many transgender women dressed in Western attire and colourful saris were traditionally dressed transgender women from ethnic minority communities. While the reasons behind their decision to dress in traditional ethnic costumes normally absent from daily life remains unknown, the presentation of their identities at a public event for sexual and gender minorities can be interpreted as a dual assertion of ethnic identity alongside their respective sexualities and gender identities or possibly an assertion of their ethnicity through their gender identity. As Sunil Babu Pant explained:

I think a lot of these people who are in traditional dresses, they represent their own districts... people are very conscious that we should not be seen as Western-influenced. So cross-dressing people do protect identity and culture and heritage customs and costumes and maybe that's that self-conscious mindset.

The idea that these constituents are also trying to 'represent their own districts' as well as their ethnic identity further strengthens the link between third gender identity, ethnic identity and state recognition of the particular ethnic identities of federal districts.

Many of these argumentative parallels have been included and affirmed in national legislation. The 2007 Supreme Court's decision to recognise third gender makes repeated mention of both the minority status of sexual and gender minorities and their unique history within Nepal. According to the ruling, it is 'the responsibility by the state to protect the civil, political, economic, social and cultural rights of the minorities from the point of view of gender identity'. Additionally, the Supreme Court's examination of various articles pertaining to the equality of rights for various groups in Nepal uses the context of religious, sex, caste and ethnic diversity as a legal precedent and contextual framework for understanding the issue of sexual and gender minorities in Nepal:

⁵ The Newar are an ethnic group indigenous to the Kathmandu valley. They historically ruled Kathmandu before the formation of the modern Nepali state circa 1768–1769.

⁶ *Gai Jatra* is a Newar holiday honouring family members who had died within the previous year. BDS decided to publicly honour deceased sexual and gender minorities on this day because their families wouldn't make observances to disowned relatives. Traditionally, the festival has included elements of socially acceptable cross-dressing as part of the festivities.

According to the data published by the Central Bureau of Statistics, Government of Nepal in 2005, there are different religious groups in Nepal such as Hindu, Buddhist, Muslim, Kirat, Jain, Christian, Sikh, Bahai and others. The state cannot discriminate these religious groups. According to the data of the Government of Nepal, there are 102 identified races and castes in Nepal. The state cannot discriminate anyone on the ground of religion, race and caste. Similarly, it cannot discriminate on the basis of sex also. Non-discrimination on the basis of sex is a fundamental right of every citizen. (*Pant versus Nepal*)

Parallels between sexual and gender identity and caste identity also arose in research participants' understanding of their relationship to the state. During the photographic research process, one respondent used a traditional quote by Nepal's first king, Prithvi Narayan Shah, which describes Nepal as a garden of four castes and 36 ethnicities to illustrate how the transgender 'community' is but another form of diversity amongst Nepal's castes and communities. Interestingly, the photo she had taken to represent her point was an ethnically based federal map of Nepal. Another respondent upon hearing this replied:

Kathmandu is a city where people from different ethnic groups from all over Nepal come and live. Since they're not from Kathmandu, they can be open and walk around freely because they don't have any family members or others who know them or see them.

This participant interpreted the relaxation of caste boundaries and norms in urban spaces as extending to their own expression of sexuality and gender identity.

While there are strong interpenetrations between the logics and conception of sexual and gender identities and ethnic identities in legal frameworks, the formation of sexual and gender minorities as an identity group upon which state privileges can be conferred has occurred by advancing sexual and gender minorities' interests under a diverse umbrella identity of sexual and gender 'others' (*anya*). BDS' advocacy has avoided the fragmentation of sexual and gender minority persons along different sexual and gender subjectivities and managed to legally preserve the plurality of sexual and gender diversity in Nepal. In an interview, Sunil Babu Pant attributed this in part due to society's general confusion and understanding that sexual and gender minorities already fall into 'one category lumped together':

Even one identity makes it simple. So if one person goes 'I'm gay', other goes 'I'm lesbian', [an]other goes 'I'm transman', [an]other goes 'I'm trans-woman, I'm bisexual', 'oh my god, how many different of you there are? We can't probably give you passport or citizenship card ID in the court system'. So those who wish to engage become non-engaged. So strategically I think for now, for the next five years, we're just one. We try to convince [them] and after half an hour they go 'tell me again who you are'.

Trying to be true to the fluid nature of sexualities and gender identities in Nepal whilst advocating for formal legal recognition is very much a delicate balancing act whereby sexual and gender minorities have had to articulate a 'shared-difference' in order to institutionalise state recognition and freedom from discrimination. If BDS and its advocates articulated a fully diverse and fluid identity in court and in their national advocacy work, the state's ability to understand and legislate universally applicable and locally specific state policies regarding sexual and gender minorities might have been weakened. It is especially difficult to argue for sexual and gender minority rights in respect of 'open subject positions' as opposed to seemingly ontologically defined subjects who appear as a much more culturally solid, identifiable constituency, with rights and recognition being conceived as immutable on this basis.

The move may have also weakened the claims of BDS and sexual minorities by making their constituencies seem too small to warrant specific legislation and legal provisions. How a movement for sexual and gender minority rights deals with the lived experience of gender and sexuality as embodied and beyond the limitations of identity terminology is an important issue in the Nepali context. Despite articulating their activism within an identity-based framework, BDS has been able to achieve legal reform *whilst* maintaining a diverse, fluid and not readily self-identified constituency of sexual and gender minority persons.

3.5 Case Study: Pant versus Government of Nepal

Nepal's most significant advance concerning gender and sexual minorities, the Supreme Court decision in favour of Sunil Babu Pant and others, has in many ways been the cornerstone of and high point in BDS' and sexual and gender minorities' advocacy work since the organisation's foundation in 2001. As one of the participating experts at the Yogyakarta seminar on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity in 2006, Sunil Babu Pant returned from the convention and made what was largely a broad and conceptual legal framework into a political reality in Nepal. The Supreme Court decision in favour of Pant guaranteed 'non-discrimination on the basis of sexual orientation and gender identity', the right to self-identification of 'gender identity on the basis of gender feelings', and ordered that a committee be formed in order to recommend legal reforms addressing the issue of same-sex marriages and the legal rights of LGBTI populations in other countries.

The court decision provided a strong legal platform from which BDS could advocate for a wide range of policies relating to sexual and gender minority issues, and placed Nepal amongst only a handful of other countries who have legally recognised a third gender category. However, the decision to pursue self-identification rights through the Supreme Court meant that the reform itself was removed from larger social and political discussions on rights and identity that were and still are taking place in Nepal. Despite the fact that Nepal's major political parties rhetorically affirm the rights of sexual and gender minorities, issues concerning those minorities have yet to be substantively discussed by an elected legislative assembly. What little discussion has taken place has been largely a result of court reporting on the successful advocacy efforts of BDS and its partners rather than a growing social awareness surrounding or concern for sexual and gender minorities. In the immediate aftermath of the civil war, when the decision was passed, there was no elected legislature or government and the national focus was on more immediate post-conflict issues such as federalism and army integration. The wider political support for the decision is therefore still unclear; however, the ruling has been instrumental in paving the way for BDS to begin advocating for reforms in multiple different sectors and for policies in the Nepali government.

The two most immediate and significant outcomes of the court decision were that third gender identity would have to be included on citizenship certificates and, for the first time ever, a third gender category would appear on the national census in 2011. It was only in 2013, five years after the Supreme Court decision, that citizenship documents listing a third gender have begun to be widely issued by the state. Recently, BDS have confirmed that with the exception of some areas in the Kathmandu valley, documents marking the third gender are being issued to third gender-identified citizens in various districts across Nepal after a directive was issued by the Home Ministry to implement the decision. The move to include third gender identity on citizenship and state registration information most importantly impacts gender minorities in two ways.

Firstly, the decision forced the state to acknowledge gender minorities as Nepal citizens and members of the nation through the explicit inclusion of a new identity category. In much the same way that ethnic minorities and women have historically been conceptually and publicly

excluded from the Nepali state, Nepal's *hijras* living in the southern plains, are conceptualised as Indian and hence not Nepali citizens. As an extension of this, the larger third gender population in Nepal, who predominately do not identify as *hijra*, were often conceived as an extension of the *hijra* tradition and also by extension non-Nepalis. By securing citizenship documents, BDS was able to publicly affirm that third gender people are Nepali and have equality as citizens whilst forcing the state to recognise them as a separate minority group in Nepal. This move largely parallels the campaigns that have been launched by various ethnic minorities to re-register and change their caste identities/family names on government documents as a way to politically assert their difference from other groups.

Secondly, while affirming that Nepal's sexual and gender minorities are a part of the Nepali nation, official state recognition is also a step towards securing greater participation in and attention from the state. Inaccurate gender identification has led to many cases of state discrimination. This, coupled with the necessity of citizenship documentation in Nepal for everything from economic transactions and bank services, to voting and access to public services, has significantly hampered third gender people from engaging in larger social, economic and political processes in Nepal. Even international travel and the chance to leave Nepal becomes challenging for third gender communities without accurate international identification. For example, BDS' third gender vice-president was questioned when travelling through the Middle East for an international conference because her passport reflected a masculine identity. Hence, it's possible that citizenship documents will actually bring with them a greater availability and potential for Nepal's gender and sexual minorities to receive more dedicated state and social services. The first national instance of special state funds and budget allocations for 'sexual and gender minorities' were made in 2008/2009 and it is likely that BDS will continue to advocate for additional funding relating to its social outreach and HIV prevention work (Bochenek and Knight 2012: 31). Recently, these legal reforms have been reflected by various actors in Nepali civil society and now certain banks recognise third gender categories on application forms.

As another result of the Supreme Court's decision and BDS advocacy, Nepal's Census Bureau also promised to include sexual and gender minorities on the national census – a pivotal tally for determining budget allocations by governments and donors. While the 2011 Census recorded the number of individuals identified as third gender, third gender identification was omitted from the complete questionnaire that gathered information on the socioeconomic characteristics of Nepali populations. This was due to limitations in the Census Bureau's software, which had been designed before BDS brought the issue to the Census Bureau. The 2011 Census was plagued with many controversies, the lack of full third gender inclusion being just one of the criticisms against it; however, BDS' push to include and identify the size of the third gender population in Nepal reflects the strong desire of the movement and the government to identify the size of the population as a prerequisite for development interventions and additional funding (Sharma 2012). Essentially, while the court decisions and the third gender category publicly acknowledged the existence of the population, the need to have an accurate size estimate of a demographic so that development spending 'proportionate' to a group's size and marginalisation can be allotted is a prerequisite for many marginalised communities operating with national and international aid paradigms.

The future potential of the Supreme Court's decision for broader reforms and progressive policies lies in the gradual expansion of state recognition for sexual and gender minorities. Recently, the Ministry of Education announced that it would be including third gender issues in the national health and reproductive curriculum. While no curriculum has been written, it reportedly will be implemented in the near future. This recent announcement is arguably one of the most significant as it represents the most substantive discussion on sexual and gender issues between larger society, the state and sexual and gender minority communities in Nepal. The development of a national curriculum on sexuality and gender issues will

hopefully involve a constructive and informative dialogue as Nepal begins to construct its own narrative of sexual and gender subjectivities. However, it is still largely unclear what exactly is to be taught in schools as the curriculum has yet to be drafted and such a decision may not be thoroughly implemented nationwide considering the significant challenges the education system already faces.

Despite these favourable reforms and the significant national-level decisions that support the Supreme Court rulings, it is clear that the larger movement's success has been hindered by the state's limited capacity, hesitancy in implementing such liberal decisions on the behalf of a population of indeterminate size that has little social recognition or status, and resistance from government officials and bureaucrats themselves (Sharma 2012: 28–33). While there are currently limitations to reforms initiated through Supreme Court decisions because of the current lack of larger social and political support for sexual and gender minorities, Sunil Babu Pant and BDS have been able to seize the momentum for progressive changes in a post-conflict 'New Nepal' and have followed up their efforts by advocating for increasingly broad state reforms. Retrospectively, for a movement only 12 years old that was formed during a time of civil war and political upheaval, sexual and gender minorities have successfully advocated for significant legal reforms but the much harder task of transforming social perceptions of the sexual and gender community in Nepal is ongoing. Even with only partial implementation of these policies, social spaces and attitudes are undergoing rapid change within the larger national and international processes of democratisation, globalisation and modernisation, and it is likely that the shifting norms in heterosexuality and traditional gender roles in Nepal will increasingly play a role in facilitating the inclusion of sexual and gender minorities.

6 Conclusion

This case study has explored sexual and gender minority rights activism in Nepal in respect of political, social and economic change. One of the central issues highlighted in this context is tension arising out of an impetus to *fix* and *essentialise* the status of sexual and gender minority peoples in law versus an analytical understanding of contemporary gender and sexual subjectivities as mutable. Tension also derives from *changing* cultural attitudes and socioeconomic transformation and the relevance of such transformation to an understanding of sexual subjectivity and sexuality rights in development work. Legal recognition for sexual and gender minorities has been progressive in Nepal – for example, the provision of citizenship documents on the basis of a third or ‘other’ gender and inclusion in the 2011 Census in these terms. The addition of third gender issues to a new national sexual health education curriculum and by the Election Commission is also significant in this regard, helping to institutionalise and foster awareness and progressive social attitudes. These measures have taken place in the context of new social realities, with wider transformation in the lives of many people in contemporary Nepal. Changing patterns of work and migration have been connected to profound shifts in cultural expectations for heterosexual marriage, for example, especially among a younger generation, who might increasingly assert new choices regarding partner choice and so on and, through, this sexuality. Sexual and gender minority rights in Nepal have emerged in this context of changing values and aspirations.

As such, the Nepal case study highlights two key trends in thinking about and responding to sexual and gender minority rights internationally. On the one hand Nepal can be interpreted as emblematic of a progressive neoliberal consensus that sees sexual and gender minority rights as *inviolable*. On the other hand, the Nepali case illustrates how such rights have occurred *through* social and economic development even if they are presented in legal and political discourse as being founded in respect for fluidity and *natural differences*. In terms of work aimed at promoting and developing sexual and gender minority rights internationally, in the context of development practice, the Nepal case foregrounds a key concern: how to promote rights for sexual and gender minorities whilst avoiding the essentialisation of such people as subjects before the law, through what might be interpreted as limiting identity discourses.

The Nepal case study offers possible strategies for responding to such concerns. One key strategy for development practice concerned with promoting sexual and gender minority rights is to proceed with sensitivity to the relationship between discourse, culture and sexual subjectivity. Research for the present study was conducted *with* respondents from sexual and gender minority groups, and sought to allow space for people to tell their stories in their own terms. The use of photography and imagery, for example, allowed people’s stories to emerge in terms that circumvented some of the pitfalls of linguistic narrative. As noted, this can tend to lead respondents into the iteration of terms for describing sexual subjectivities and identities in a manner that may appear to be *local* but which can actually be removed from the cultural and personal realities that they are typically made to represent (in simplistic terms). In development work that seeks to promote sexual and gender minority rights it is important to conduct research that allows for this kind of dissonance and complexity to emerge.

In working in this way it is important to recognise that internationally recognised terms such as LGBTI may be both empowering and limiting in terms of sexual and gender minority rights. A prevailing critique of the use of such terms in development discourse and practice regards a tendency to ‘write over’ local realities. In Nepal, however, inasmuch as the present research has revealed the need to avoid reductive use of essentialised identity terms, terms such as LGBTI and *meti* (as a proxy for ‘local’ sexualities) are used by activists in ways that

they experience as enabling in terms of promoting rights and social justice. It is important to recognise that social progress in terms of sexual and gender minority rights, in any social context, is unlikely to be linear – proceeding along the lines of one discourse or strategy only. Just as the reality is that many sexual and gender minority peoples articulate their lives and experiences in respect of varied terms of reference or subjectivity, so too will political and activist discourse take shape in respect of difference registers. The Nepal case study has highlighted complex strategies that both promote social progress by increasingly establishing stable terms for recognising sexual and gender minorities in law, whilst also developing community support work that allows space for more ambiguity in self-understanding.

This nuancing of practice reflects aspects of social reality in Nepal, a country with a progressive legal context for sexual and gender minority rights, but in large part social and cultural ambivalence on such matters. The recent threat to the progress of BDS' work reflected this circumstance. The reification of Nepal as a progressive example of sexual and gender minority rights legalisation internationally may obscure a more complex social reality, one that also makes aspects of this work vulnerable in the context of local governance. This is another important learning point for international work in this context; to pay attention to the complexities of changing social circumstances regarding gender and sexuality in countries such as Nepal and their multifaceted and uneven relationship to legal reform. This can be achieved via modes of research and advocacy that not only work within the prevailing assumptions of transnational sexual rights discourses (for example the promotion of rights in terms of LGBTI politics or reductive use of seemingly local sexuality terms) but that also seek to better understand the strategic use of varying discursive registers within rights-based advocacy. The work of BDS offers an instructive example in these terms.

Recommendations

The present research has highlighted the need to understand sexual and gender minority people's lives and experiences independently from an HIV prevention and legal framework, and to build development interventions into the social and economic wellbeing of such people from this basis.

There is a need to examine gender (including masculinity) and heteronormativity – especially with respect to changing social norms and values. Gender and sexual minorities ought to be the focus of new research and interventions, but the lives of such people must be studied holistically, in respect of the total context of social, cultural and economic transformation (e.g. in Nepal). This is opposed to research that emphasises the reductive use of sexuality categories (such as *meti*) as if knowledge of such terms represented the most salient framing for sexual and gender minority subjects.

In Nepal specifically there is a paucity of research on LGBTI-identified people. Despite the evocation of this term in law there is a lack of understanding of the lives of people who actually identify as 'lesbian, gay, bisexual, transgender or intersexed' (in those specific terms). Research on these themes might reveal interesting insights into sexuality and socioeconomic aspirations in Nepal.

In terms of policy reform, it is important to de-emphasise mappings and population estimates in research with sexual and gender minorities in favour of social transformation approaches, focused on education, outreach and wider awareness of sexual and gender minority issues. The rollout of a new national sexual health education curriculum in Nepal offers an exciting opportunity to conduct research on these issues.

There is also a need to conduct research on access to healthcare by gender and sexual minority peoples, many of whom may be excluded from mainstream health facilities (especially those who might be explicitly identified as gender-variant in terms of appearance).

Direct funding for advocacy/education campaigns should also continue as well as any programme that engages larger segments of Nepali society in dialogue about sexual and gender minority issues, and *with* sexual and gender minority peoples, relating such interventions to the larger social/national issues that affect participants' daily lives.

Finally, it is imperative to conduct future research with sexual and gender minority peoples and engaged participants who can determine frames of study and reference. This is important for *grounding* social analysis, development interventions and rights-based advocacy in people's social and personal realities.

References

- Blue Diamond Society (2012) 'A Compiled Report of Different HIV/AIDS Prevention, Care and Support and Human Rights Programs of Blue Diamond Society July 2011–July 2012', unpublished annual report
- Bochenek, M. and Knight, K. (2012) 'Establishing a Third Gender Category in Nepal: Process and Prognosis', *Emory International Law Review* 26: 11–41
- Boyce, P. (2012) 'The Ambivalent Sexual Subject: HIV Prevention and Male-to-Male Intimacy in India', in P. Aggleton, P. Boyce, H.L. Moore and R. Parker (eds), *Understanding Global Sexualities: New Frontiers*, London and New York: Routledge
- Boyce, P. and Babu Pant, S. (2001) *Rapid Ethnography of Male-to-Male Sexuality and Sexual Health – Kathmandu, Nepal*, a report of Family Health International, www.who.int/hiv/topics/vct/sw_toolkit/ethnography_male_male_sexuality.pdf (accessed 4 July 2013)
- Boyce, P. and Hajra, A. (2011) 'Do You Feel Somewhere in Light that Your Body Has No Existence? Photographic Research with Men Who Have Sex with Men and People of Transgender in West Bengal', *Visual Communication*, 10.1: 3–24
- Boyce, P.; Huang Soo Lee, M.; Jenkins, C.; Mohamed, S.; Overs, C.; Paiva, V.; Reid, E.; Tan, M. and Aggleton, P. (2007) 'Putting Sexuality (Back) in HIV/AIDS: Issues, Themes and Practice', *Global Public Health* 2.1: 1–34
- Boyce, P. and Khanna, A. (2011) 'Rights and Representations: Querying the Male-to-Male Sexual Subject in India', *Culture, Health and Sexuality* 13.1: 89–100
- Correa, S.; Petchesky, R. and Parker, R. (2008) *Sexuality, Health and Human Rights*, London and New York: Routledge
- Diswas, K.C. (2008) 'The State of Homosexuality', *Himal, South Asian: Circle of Sexuality*, <http://himalmag.com/component/content/article/1011-the-state-of-homosexuality.html> (accessed 19 July 2013)
- Franke, K. (2012) *Dating the State: The Moral Hazards of Winning Gay Rights*. Columbia Law School, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2014541 (accessed 4 July 2013)
- Human Rights Watch (2013) *Nepal: Climate of Fear Imperils LGBT People*, www.hrw.org/news/2013/04/01/nepal-climate-fear-imperils-lgbt-people (accessed 4 July 2013)
- Khanna, A. (2009) 'Queering the Sexual Subject of Development', *Sexuality and Development*, 52.1: 43–51
- Liechty, M. (2002) *Suitably Modern: Making Middle-Class Culture in a New Consumer Society*, New Jersey: Princeton University Press
- Misra, C. (2007) *Essays on the Sociology of Nepal*, Michigan: Fine Print Publications

Nepal Supreme Court (2007) *Decision of the Supreme Court on the Rights of Lesbian, Gay, Bisexual, Transsexual and Intersex (LGBTI) People*, translation by BDS
www.bds.org.np/publications/Supremecourt.pdf

Pigg, S.L. (2005) 'Globalizing the Facts of Life', in V. Adams and S.L. Pigg (eds), *Sex in Development: Science, Sexuality and Morality in Global Perspective*, Durham and London: Duke University Press

Sharma, M. (2012) *Building the Evidence Base for Promoting and Protecting the Rights of Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) Children in Nepal: An Assessment*, Kathmandu, Nepal: Save the Children

UNAIDS (2011) *Risk and Vulnerability: Assessment of Transgender People in Nepal*, Kathmandu, Nepal: UNAIDS

Wilson, E.; Pant, S.B.; Comfort, M. and Ekstrand M. (2010) 'Stigma and HIV Risk among *Metis* in Nepal', *Culture, Health and Sexuality* 13.3: 253–66

World Bank (2011) *Migration and Remittances Factbook 2011*
<http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>
(accessed 4 July 2013)



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